United Technologies Corporation *and* Lodge 1746, International Association of Machinists and Aerospace Workers, AFL-CIO and District 91, International Association of Machinists & Aerospace Workers, AFL-CIO. Cases 1-CA-12015, 1-CA-12102, 1-CA-12137, 1-CA-15877, and 1-CA-16152

March 31, 1982

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

On November 25, 1980, Administrative Law Judge Arthur A. Herman issued the attached Decision in this proceeding. Thereafter, Respondent, Charging Party, and General Counsel filed exceptions and a supporting briefs.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge and to adopt his recommended Order.[1]

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, United Technologies Corporation, East Hartford and Windsor Locks, Connecticut, its officers, agents, successors, and assigns, shall take the action set forth in said recommended Order, except that the attached notice is substituted for that of the Administrative Law Judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

The Act gives employees the following rights:

To engage in self-organization

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To engage in activities together for the purpose of collective bargaining or other mutual aid or protection

To refrain from the exercise of any or all such activities.

WE WILL NOT threaten our employees with reprisals for engaging in union activities.

WE WILL NOT discourage membership in Lodge 1746 or District 91, International Association of Machinists and Aerospace Workers, AFL-CIO, or any other labor organization by suspending or otherwise discriminating against our employees because they engage in union activities.

WE WILL NOT maintain and enforce an invalid no-distribution rule.

WE WILL NOT order our employees to cease engaging in union activities.

WE WILL NOT deny any employee, represented by a union, the assistance of a union representative when the employee is being interrogated by management agents about alleged misconduct.

WE WILL NOT suspend any employee, represented by a union, who refuses to answer questions during an interrogation by management agents after the employee has been denied the assistance of a union representative.

[1] In the absence of exceptions thereto we adopt, *pro forma*, the Administrative Law Judge's recommendation to dismiss the allegation of the complaint involving interrogation of employees concerning their union and other protected concerted activity. In so doing, however, we disavow the Administrative Law Judge's gratuitous and unwarranted suggestion that a basis for dismissing such an allegation might be afforded by the physical or intellectual limitations of employees who were the target of the alleged interrogations. We also disavow the Administrative Law Judge's suggestion that an allegation of 8(a)(1) interrogations may be dismissed because the interrogations occurred at a single plant and were therefore "isolated" and because the interrogations did not result in reprisals or "repercussions." See, generally, *PPG Industries, Inc., Lexington Plant, Fiber Glass Division*, 251 NLRB 1146 (1980), and *Centre Engineering, Inc.*, 253 NLRB 419 (1980). We also will not pass on the facial validity of Respondent's no-solicitation rule since that issue was not contested at the hearing.

Member Zimmerman agrees with the Administrative Law Judge that Respondent unlawfully denied its employees their right under *N.L.R.B. v. J. Weingarten, Inc.*, 420 U.S. 251 (1975), to the assistance of their union steward in interviews which they reasonably believed might result in discipline by restricting the role of the steward to that of an observer who could not participate in the interview. In reaching this conclusion, Member Zimmerman finds it unnecessary to rely on *Climax Molybdenum Company, a Division of Amax, Inc.*, 227 NLRB 1189 (1977), enforcement denied 584 F.2d 360 (10th Cir. 1978), which involved the issue of whether employees have the right to consult with their union representative *prior to* the interview. Rather, he relies on *Texaco, Inc.*, 251 NLRB 633 (1980), enfd. 659 F.2d 124 (9th Cir. 1981), wherein the Board held that a respondent violates Sec. 8(a)(1) by requiring an employee's union representative to remain silent during a *Weingarten* interview. Member Fanning and Jenkins agree with Member Zimmerman that *Texaco, Inc., supra*, is applicable to the facts of the case. They aslo, however, agree with the Administrative Law Judge's reasoning and continue to rely on *Climax Molybdenum Company, supra*.

WE WILL NOT issue disciplinary warnings to any of our employees or suspend any of our employees for engaging in union activities.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of their rights guaranteed by Section 7 of the Act.

WE WILL make whole the following-named employees for any loss of pay, plus interest, they may have suffered as a result of the discrimination against them:

Thomas Bothur	Henry Savioli
Dawn Carney	George Steele
Robert Garry	Joseph Orzoler
Bruce Easter	William Dwyer
John McCormack	

WE WILL remove from the personnel records of employees all references contained therein, in the form of disciplinary warnings or notices of suspension, which issued against said employees that pertained to the incidents found in this case to be violative of the Act:

George Steele	Wayne Coyle
Steven Merrick	Raymond Jelinas
Conrad Lloyd	Francis Clark
Dennis Brandt	Robert Brown
John McCormack	Joseph Bison
Norman Swanson	John Johnston
Joseph Orzolek	Marcos Cortez
Anthony Scionti	William Dwyer
John Shields	David Grondin
Bruce Easter	Gassie Mae Newsome
Robert Garry	Delbert Baskerville
Francis Englehart	Francis Caswell
Earl Evans	Carl Balanoff
Earl Schofield	William Pagani
Robert Kyle	Thomas Bothur
Edward Ciccaglione	Michael Cote
William Rudis	John Francis
Ralph Allen	Llewellyn Priest
Nino DiGregorio	Dennis Sardi
William Milewski	Joe Sienna
Delia Dwyer	John Bolduc
Stephen Bennet	John Sweatt
John Shields	Paul Burns
John Mulligan	Bernard Plummer
Andrew Tomko	Earl Davies
Charles Teasley	George Spencer
Peter Hatch	Dave Balon
Jere Dyer	Jack Dolce
Roger Rowley	John Pelkey
James Parent	Paul Dinardo
Charles MacNeil	George Contois
Charles Beaulieu	Raymond Durette
George Arsenault	Dave Meikle
Charles Scully	Roland Smith
William Houlberg	Roger Surprenant
Dawn Carney	Henry Savioli

UNITED TECHNOLOGIES CORPORATION

DECISION

STATEMENT OF THE CASE

ARTHUR A. HERMAN, Administrative Law Judge: The charge in Case 1-CA-12015 was filed on July 15, 1976, by Lodge 1746, International Association of Machinists and Aerospace Workers, AFL-CIO, herein called Lodge 1746. On August 12, 1976, Lodge 1746 filed a charge in Case 1-CA-12102, and on August 20, 1976, Lodge 1746 filed its third charge in Case 1-CA-12137. An amended charge to Case 1-CA-12137 was filed by Lodge 1746 on August 8, 1978. An order consolidating cases[1] and complaint and notice of hearing issued on August 30, 1978, alleging two suspensions of Thomas Bothur and the discharges of Thomas Bothur and Vincent Nash, all in violation of Section 8(a)(1) and (3) of the Act. A further order consolidating cases and amended complaint and notice of hearing issued on February 20, 1979, which included all three charges, and in addition to the allegations stated above, alleges that the Respondent threatened to discharge employees for distributing union literature, ordered employees to cease distributing union literature, issued disciplinary warnings to employees because they distributed union literature, and suspended employees because they distributed union literature.

On April 3, 1979, District 91, International Association of Machinists & Aerospace Workers, AFL-CIO, herein called District 91, or collectively with Lodge 1746, the Union, filed a charge in Case 1-CA-15877, and a first amended charge was filed on May 17, 1979. This resulted in a further order consolidating cases and amended complaint and notice of hearing which issued on June 4, 1979, and which, in addition to incorporating all of the allegations in the prior complaint, added allegations of interrogation of employees about their protected concerted activities, and suspension of employees who sought assistance during investigatory interviews. On the same day, June 4, 1979, District 91 filed an additional charge in Case 1-CA-16152, and a first amended charge was filed on July 20, 1979. Once again, on July 24, 1979, a further order consolidating cases and amended complaint and notice of hearing issued and added an allegation that the Respondent denied a solicitation request in order to discourage union activity. A final further amendment to the amended complaint issued on October 10, 1979, and alleged that the Respondent maintained and enforced an unlawful distribution of literature rule in violation of the Act. The Respondent filed answers and affirmative defenses to the consolidated complaint and to all subse-

[1] Only Cases 1-CA-12015 and 1-CA-12137 were consolidated in this Order.

quent consolidated amended complaints and denied the commission of the alleged unfair labor practices.

The hearing was held before me on October 22, 23, 24, and 25, 1979, at East Hartford, Connecticut.[2] Briefs were timely filed by the General Counsel, by the Charging Party, and by the Respondent, and have been duly considered.

Upon the entire record, including my observation of the witnesses, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

The Respondent, a Delaware corporation, is engaged in the manufacture, sale, and distribution of aircraft engines, helicopters, aircraft accessories and parts, and related products in its plants located in Connecticut, Florida, New York, California, and Pennsylvania. In connection with its operations in Connecticut, the Respondent annually sells and ships goods from its plants in Connecticut valued in excess of $1 million directly to customers located outside the State of Connecticut. The Respondent admits, and I find, that it is engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The parties agree, and I find that the Union has been at all times material herein a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Background*

The following facts in this section are based on admissions in the pleadings, stipulations of the parties,[3] and documentary evidence:

As stated above, the Respondent has plants in several States of the United States. Involved herein, however, are two plants in Connecticut—the Pratt-Whitney plant in East Hartford, and the Hamilton-Standard plant in Windsor Locks. The Pratt-Whitney plant is comprised of many buildings over a large expanse of ground surrounded by a fence.[4] All entrances are manned by security guards to control ingress and egress. The Respondent employs approximately 35,000 production and maintenance employees on three shifts at the Pratt-Whitney plant; 20,000 to 25,000 of these employees work between 7 a.m. and 5 p.m., and about 12,000 of them are represented by the Union. The Hamilton-Standard plant, located adjacent to Bradley Field, consists of three principal buildings housing 9,000 employees of whom 4,500 are in the bargaining unit represented by the Union. Building 3, the building involved herein, is devoted entirely to electronic work; it employs approximately 600 employees, of whom about 400 are in the bargaining unit.

Throughout the long and sometimes bitterly fought history of labor-management relations between the Respondent and the Union,[5] no collective-bargaining agreement had ever contained a union-security clause. For this reason, the Union has for years distributed union literature by posting union stewards and employees at the several plant entrances where employees would enter the plant to go to work.[6] Generally, these union adherents stood outside the plant entrance (point D) to make their biweekly distribution, but sometimes, in inclement weather, they would stand inside the plant doors.[7] In early 1974, Bothur, a union steward, and other employees decided to move inside the plant door and up an aisleway to where it met a cross-aisle adjacent to a working area (point A). When told by management that they were disrupting working employees, Bothur and the other distributors moved down the aisle away from the work floor and toward the door, to the next cross-aisle, which is on the fringe of a work area (point B). When told by management that this too was causing disruption, the union adherents moved down the aisle to the exit doors and continued to distribute in this corridor which is closed on both sides by walls so that it is cut off from the work areas (point C). From time to time security guards would ask the distributors not to use point C for distribution, but never ordered them to leave.[8] This situation continued until the spring of 1976.[9] On March 18, 1976, the Respondent, without consultation with the Union, issued a revision of its general employee rules, including, *inter alia*, rule 7 which prohibited:

> Posting, displaying, or distributing unauthorized pictures, posters, or literature, including union, political and discriminatory material on company property.

Shortly thereafter, during the next union distribution in April 1976, Bothur and the other distributors were ordered to cease distribution at point C and threatened with discipline if they did not move their distribution activities outside the plant doors to point D. Despite these

[2] Subsequent to the close of hearing herein, separate motions to reopen the hearing were filed with me by the Charging Party and the Respondent. By order dated January 10, 1980, both motions were denied. By letter dated February 4, 1980, the Respondent advised me of an arbitration decision regarding the discharge of two of the Respondent's employees and enclosed a copy of the decision "for [my] information." Inasmuch as their discharge was not the subject of the instant proceeding, I am rejecting the decision as an exhibit, and am advising the parties hereto that I have not perused the document.

[3] One of the principal issues in this proceeding concerns the arbitration awards issued by Arbitrator Marcel Mallet-Prevost on August 27, 1977, in the Bothur case and on November 10, 1977, in the Nash case, both discussed *infra*. At the instant hearing, the parties stipulated to the arbitrator's findings of fact but not to his conclusions of law.

[4] This conclusion is based on my observation of the area during an onsite inspection of the premises, accompanied by representatives of all parties involved herein.

[5] I take administrative notice of the Board's decisions in *United Aircraft Corporation (Pratt & Whitney Division)*, 168 NLRB 480 (1967), 179 NLRB 935 (1969), 180 NLRB 278 (1969), and *United Aircraft Corporation (Pratt & Whitney and Hamilton Standard Division)*, 204 NLRB 879 (1973).

[6] The parties stipulated that said distributions were accomplished on nonworktime.

[7] Up until early 1974, Bothur did his distributing at the entrance to gate 2, standing on the sidewalk of Willow Street.

[8] It is the Union's contention that point C is a nonwork area.

[9] From 1974–76, the parties engaged in negotiations in an attempt to agree upon acceptable areas for the distributors to stand. In September 1974, a grievance was resolved on the basis that distribution would be permitted "inside the gate and not inside the plant." The Union accepted this without waiving any "statutory rights."

orders and threats, Bothur and his cohorts continued to distribute at point C. Finally, on June 29, 1976, Respondent issued "employee reports" to Bothur and to 29 other distributors.[10] The next distribution of union literature occurred on July 21, 1976, at point C, and once again the distributors refused to move to point D when ordered to do so by management. This resulted in a 3-day suspension for Bothur and six others who had earlier received "employee reports," and 40 other employees who had not received employee reports were issued such employee reports.

Subsequently, on July 22, 1976, Bothur became embroiled in some unfinished union business involving a grievance. While Bothur and Roberts were so engaged, a company supervisor requested that they "break it up"; one thing led to another, and the altercation resulted in Bothur accompanying the guards to their headquarters.[11] While Bothur was on military leave and/or vacation from July 23 to August 16, 1976, he was notified by the Respondent of an additional 30-day suspension for his insubordination on July 22, 1976.

Vincent Nash, a union steward, was discharged on July 12, 1976, for admittedly violating a company rule which prohibited solicitation of union membership during working hours, when he solicited two employees to join the Union on June 21, 1976. While the General Counsel concedes that the act was in contravention of article IV of the collective-bargaining agreement,[12] he contends that the discharge of Nash was nonetheless discriminatory because the Respondent does not discipline other employees who engage in similarly proscribed conduct under its no-solicitation rules.[13]

As a result of the aforementioned incidents, the Union filed the initial three charges in this proceeding during July and August 1976. This eventually culminated in a complaint issued on August 30, 1978. The reason for the 2-year delay in the issuance of a complaint is best explained by the following recitation of what occurred after the three charges were filed:

On September 17, 1976, the parties agreed to resolve certain issues raised in the three charges by submitting them to arbitration to be heard by Arbitrator Marcel Mallet-Prevost. The agreement read as follows:

> The parties agree to expedite the arbitration of the Nash, Bothur and Roberts grievances which are subjects of the Union's charges filed with the NLRB in Case Nos. 1-CA-12,015; 1-CA-12,137; and 1-CA-12,102, respectively, by submitting the grievances to Arbitrator Marcel Mallet-Prevost in hearings to commence before said Arbitrator on November 4, 1976. The Union agrees to withdraw the aforesaid charges insofar as they relate to the subject matter of said grievances, without prejudice, reserving its right to refile after the decision of the Arbitrator is rendered, subject to "*Collyer*" standards.[14]

On September 22, 1976, the Union requested of the Regional Office a withdrawal without prejudice of its charges in the numbered cases to the extent that they allege violations with respect to Nash, Roberts,[15] and Bothur, and attached a copy of the aforesaid agreement. The Regional Director for Region 1 approved the withdrawal request in Case 1-CA-12137 on October 6, 1976, and in Case 1-CA-12015 on May 18, 1977.[16]

On October 11, 1976, the Respondent discharged Bothur allegedly for the same conduct which previously resulted in his 30-day suspension; i.e., insubordination for refusing to break up a grievance meeting on October 6, 1976, after being instructed to do so. No unfair labor practice charge was filed by the Union over this discharge; rather, the parties agreed to bypass the steps in the grievance procedure and add Bothur's discharge to the issues the parties agreed to present to the arbitrator in their agreement of September 17, 1976.

Arbitration proceedings over Bothur's suspensions and discharge were held in November and December 1976, and the arbitrator's award upholding the suspensions and discharge issued on August 27, 1977. Nash's discharge was arbitrated in December 1976, and the arbitrator sustained the discharge in a decision issued on November 10, 1977. In resolving the Bothur and Nash issues, the arbitrator, in effect, resolved the ongoing dispute between the Respondent and the Union concerning the distribution of union literature, the solicitation for union membership during working hours, and the dispute regarding discussions between a union steward and an employee prior to filing a grievance.

On February 16, 1978, the Union filed a charge in Case 1-CA-14133, alleging its belief that the arbitrator's decisions were repugnant to the Act that they did not

[10] The reports stated:

> "Having been requested and then directed to distribute union institutional literature at those company property locations historically used for such distributions, and having refused to do so and submit your disagreement to the established grievance procedure, you are hereby warned that your future persistence in such conduct will result in more severe disciplinary action."

[11] A more detailed account of what transpired appears *infra*, in my discussion of the arbitrator's ruling.

[12] Art. IV of the contract provides in pertinent part as follows:

> There shall be no solicitation of employees for union membership or dues conducted upon the premises of the company during working hours by the union, its representatives or by employees; nor shall there be any distribution, or collection of payroll deduction assignment cards for union dues and the initiation fee conducted upon the premises of the company during working hours by the union, its representatives or by employees.

[13] Company general rule 5 states that the "following practices are strictly forbidden":

> "5. Gambling, taking orders, selling tickets, soliciting or contributing money for any unauthorized cause. This prohibition includes employees, during their working time, conducting union business, soliciting union membership, or distributing or collecting assignment cards for union dues on company property."

[14] Although the agreement refers to "*Collyer* standards" (*Collyer-Insulated Wire, A Gulf and Western Systems Co.*, 192 NLRB 837 (1971)), what was clearly meant was "*Spielberg* standards" (*Speilberg Manufacturing Company*, 112 NLRB 1080 (1955)), since that is the standard of review applied to arbitration awards. Any future reference in this Decision to this agreement will contain the phrase, *Spielberg* standard.

[15] Inasmuch as the arbitrator found Roberts' suspension unjustified, there is no issue in this proceeding regarding Roberts.

[16] In addition to approving the withdrawal of the Nash allegation and an 8(a)(5) allegation regarding a refusal to discuss certain grievances, the Regional Director for Region 1 issued the standard "*Collyer*" letter in which he deferred, to the arbitral process, certain allegations discussed *infra* as part of his November 20, 1978, letter

satisfy the Board's *Collyer-Spielberg* standards, and that, therefore, the Union wishes to exercise its right under the agreement with the Respondent dated September 17, 1976, and requests Region 1 to reassert jurisdiction. On August 15, 1978, the Regional Director for Region 1 revoked his approval of the Union's request for withdrawal in Case 1-CA-12137, and on August 16, 1978, he approved the Union's withdrawal request in Case 1-CA-14133. On August 28, 1978, the Union filed an amended charge in Case 1-CA-12137 adding an allegation relating to Bothur's discharge. As stated above, the first complaint that issued in this proceeding issued on August 30, 1978, and alleged the two suspensions of Bothur and the discharges of Bothur and Nash.[17] During the pendency of the Respondent's Motion for Summary Judgment before the Board, the Regional Director for Region 1, on November 20, 1978, advised the parties to this proceeding that in the event the motion would be denied it was his intention to include in an amended complaint all of the matters in Cases 1-CA-12015, 12102, and 12137 that had been deferred in his letter of May 18, 1977, relating to the alleged threats to discharge employees for distributing union literature, and disciplinary warnings and suspensions issued to employees for such distribution. And so, on February 20, 1979, the complaint was amended to include the above allegations. Thereafter, a charge filed on April 3, 1979, and amended on May 17, 1979, and a charge filed on June 4, 1979, and amended on July 20, 1979, resulted in further amendments to the complaint herein. These last amendments are totally unrelated to the 1976 charges.[18] One further amendment followed on October 10, 1979, which is related to the 1976 charges in that it alleges the maintenance and enforcement of an unlawful distribution rule in 1976-77.[19]

[17] On October 19, 1978, Respondent filed a Motion for Summary Judgment with the Board, and, on December 12, 1978, the Union filed a Cross-Motion for Summary Judgment. Both motions were denied on February 9, 1979.

[18] These allegations shall be dealt with, *infra*, after all of the issues relating to the 1976 charges are discussed.

[19] During the course of the hearing the Respondent moved to strike and dismiss this amendment to the complaint, alleging that subsequent to the Regional Director's "*Collyer*" letter of May 18, 1977, in which he determined that absent settlement, a complaint would issue with regard to certain allegations of the charge in Case 1-CA-12015, the parties entered into a settlement agreement on June 27, 1977, in which the Union agreed "to withdraw the remaining portions of its charge upon the Company's representation that it will agree promptly to negotiate in good faith (subject to traditional 8(a)(5) standards) with representatives of the Union over the revised rules which the Company announced on March 18, 1976 and which formed the basis for the Union's charge in the case." Respondent argues that said withdrawal removed the 8(a)(1) allegation relating to rule 7 from the context of the charge and that the Regional Director erred in resurrecting it in amendments to the complaint in 1979, more than 6 months after the rule had been revised in November 1977, to the satisfaction of the Union. The General Counsel and Union contend that there never was any intent to withdraw the 8(a)(1) allegation or in fact, a withdrawal of same, that the agreement to withdraw only extended to the 8(a)(5) allegation, that the charge in Case 1-CA-12102, which was never withdrawn, reiterates the allegation regarding the involved rule; and that, as further proof of the viability of the allegation, it was fully litigated before the arbitrator. For all of the reasons advanced by the General Counsel and the Union, I find that the allegation charging the invalidity of rule 7 continued to survive throughout the entire period from March 1976 to November 1977 and is a proper addendum to the complaint. The Respondent's motion is denied.

B. *The Parties' Major Contentions*

Thus, having laid out all of the administrative and procedural ramifications contained in this case, and before proceeding to the substantive issues that have been raised, it is incumbent upon me at this time to direct my attention to the parties' major contentions.

1. The Respondent contends that the 6-month limitation imposed by Section 10(b) of the Act bars the issuance of a complaint based on a timely filed charge which with the approval of the Regional Director, had been withdrawn, but which, almost 2 years later, was reinstated by the Regional Director when he revoked his prior approval of the withdrawal.

The Board's general rule is that where a charge has been filed, withdrawn, and later refiled, the 6-month limitation period in Section 10(b) of the Act commences from the filing and service of the new charge. See *Glacier Lincoln-Mercury, Inc.*, 189 NLRB 640, 643 (1971); *Koppers Company, Inc., Forest Products Division*, 163 NLRB 517 (1967); *Olin Industries Inc., Winchester Repeating Arms Company Division*, 97 NLRB 130, 133 (1951). Thus, a withdrawn charge cannot be reinstated to revive liability for a violation which occurred more than 6 months prior to the reinstatement of the charge. However, where equitable considerations were found to exist, the Board has permitted the Regional Director to reinstate a withdrawn charge so that the 10(b) period is measured from the date the charge was initially filed. See *Public Services Planning and Analysis Corporation, d/b/a Airport Connection*, 243 NLRB 1076, 1077 (1979); *Silver Bakery Inc. of Newton*, 150 NLRB 421 (1964), enforcement denied 351 F.2d 37 (1st Cir. 1965).

In *Airport Connection, supra*, an employee, Barrett Shames, filed a charge on March 27, 1978, alleging that the employer had discharged him on March 23, 1978, in violation of Section 8(a)(3). The Regional Office erroneously concluded that it did not have jurisdiction over the employer and solicited a withdrawal of the charge from the employee. The charge was withdrawn without prejudice on April 13, 1978, and the employer was so notified. In September 1978, another employee filed a similar charge, and this time the Regional Office concluded that it did have jurisdiction. Whereupon, in November 1978, Shames contacted the Regional Office requesting that it reinstate his charge in light of their recent determination to assert jurisdiction over the employer. The Region did reinstate the charge and notified the employer. On February 28, 1979, a complaint issued on Shames' charge. The employer contended that Section 10(b) prohibited the reinstatement of the withdrawn charge more than 6 months beyond the date of the alleged unfair labor practice. However, the Board rejected this argument noting that:

> [T]he General Counsel, pursuant to Section 3(d) of the Act, has virtually unlimited discretion to proceed on such timely filed charges as he deems fit and, in the absence of a showing of abuse of this discretion, the Board will not interfere with the General Counsel's exercise thereof. This discretion clearly includes the authority to reinstate timely

> filed charges which have been withdrawn. . . . [In addition,] the Board will not overrule the General Counsel's decision to reinstate a timely filed charge unless Respondent can show that the equities of the case compel such a result.

In reviewing the "equities of the case" in *Airport Connection, supra*, the Board noted two factors which it found significant in permitting the reinstatement of the charge. First, the charging party had been "prompt and diligent" in pursuit of his remedy by promptly filing the initial charges and immediately requesting reinstatement when he learned of the Region's error. Second, the respondent could not allege that it relied to its detriment on the withdrawal of the charge, since the respondent was notified that the charge was withdrawn "without prejudice," and the respondent had consented in a unrelated settlement agreement to the right of the General Counsel to proceed to hearing on the reinstated charge. *Id.* at 1077. In light of the Board's opinion in *Airport Connection, supra*, the issue in the case at bar is whether or not such "equitable considerations" exist to allow the reinstatement of the previously withdrawn charges. An examination of the facts indicate that such equitable considerations are present.

In the instant case, the charges were withdrawn "without prejudice," and the parties had agreed that the withdrawal of the charges would not prevent the refiling of those charges by the Union. Clearly, then, the Respondent had contemplated the possibility of the refiling of the withdrawn charges if the arbitration awards failed to comply with the *Spielberg* criteria. Thus, as in *Airport Connection, supra*, the respondent could claim that it had relied to its detriment on the withdrawal.

Similarly, it appears that the Union had been "prompt and diligent" in the pursuit of its remedy. The Union filed charges for Nash's discharge (Case 1-CA-12015) within 3 days of the incident; and within several weeks of Bothur's suspensions, the charges in Case 1-CA-12137 were filed. In addition, the Union claims that shortly after receiving the arbitration awards on August 27 and on November 11, 1977, it had notified the Regional Office by phone of its intention to appeal the awards under *Collyer-Spielberg*. The Union also contends that shortly after each call it submitted its appeal to the Region. (See the Union's response to the Respondent's Motion for Summary Judgment at pp. 6-7.)

The Respondent contends that its first hint that the Union intended to challenge the awards came in February 1978 when the Union filed its charge in Case 1-CA-14133. The Respondent also argues that the Board's decision in *Collyer Insulated Wire*, 192 NLRB 837 (1971), implies, in footnote 18, that a party seeking to appeal an arbitrator's award for failing to meet *Spielberg* standards must do so within 20 days or such further time as the Board may allow (Respondent's Motion for Summary Judgment at pp. 14-15); and therefore the Union's appeal was untimely. However, the Respondent's contentions do not sufficiently counteract a showing of prompt and diligent action by the Union for several reasons.

First, the Union contends, and it is not contradicted, that a Board attorney had contacted the Respondent's counsel sometime prior to February 16, 1978, regarding the Union's intention to appeal (Union's Response to Respondent's Motion, p. 7). More importantly, it appears that where a case has been "*Collyer*ed" the Regional Office will take the initiative to contact the parties, rather than requiring the party who is dissatisfied with the arbitrator's award to file objections. However, even if one accepts the Respondent's interpretation that the Board in *Collyer, supra*, adopted the time limits of Section 102.48(d)(2) for appealing arbitration awards, that section states "20 days, or such further period as the Board may allow."[20] Thus, it is conceivable that the Region had decided to extend the period in this instance.

In addition to the equitable consideration raised in *Airport Connection, supra*, the case at bar has one element that estops the Respondent from raising Section 10(b) as a defense, and that is the agreement between the parties which reserved to the Union a right to refile. Although no case involving such an agreement has come before the Board, it is analogous to those cases where parties have agreed to stay the bringing of a suit. In one such case, *Robinson* v. *City of New York*, 265 N.Y.S.2d 566 (1st Dept. 1965), the court noted that "where the agreement, representations or conduct of a defendant have caused a plaintiff to delay suit on a known cause of action until the statute of limitations has run, the courts will apply the doctrine of estoppel to prevent an inequitable use by defendant of the statute [of limitations]." *Id.* at p. 569-570. Thus, this doctrine of equitable estoppel would seem to apply to the agreement between the parties in the instant case.

In addition to the doctrine of equitable estoppel, I view the agreement between the parties in still another way which would prevent the raising of a 10(b) defense. Their agreement was essentially a deferral, albeit between the parties and not Board sanctioned, under the *Collyer* standard. The parties, by approaching the Region and requesting a withdrawal of the charge so the dispute could be resolved through arbitration, and by further stipulating that the Union had the right to refile the charges if the awards did not comport with *Spielberg* standards, in essence had asked the Region to "*Collyer*" the case. While the procedure and form was not that of a true *Collyer* deferral, it is indistinguishable in substance. Viewed in this light, the Board had retained jurisdiction over the matter as it does in any "*Collyer*ed" case, thus eliminating the 10(b) question. Under all the circumstances stated above, the Respondent's motion to dismiss the complaint on the grounds that it is time-barred is denied.

2. The Respondent further contends that inasmuch as Bothur's discharge was never the subject of a timely filed charge, i.e., no charge was filed on Bothur's behalf within 6 months of the date of his discharge, the allegation relating to his discharge should be stricken from the complaint.

It is well established that a complaint can only issue where a timely charge has been filed. See *Minnie E. Nash* v. *Florida Industrial Commission, et al.*, 389 U.S. 235 (1967). However, it is equally well settled that the

[20] The Board's Rules and Regulations, Series 8, as amended, Sec. 102.48(d)(2).

General Counsel is not confined in issuing his complaint to the allegations enumerated in the charge. See *N.L.R.B.* v. *Globe Wireless, Ltd.*, 193 F.2d 748, 752 (9th Cir. 1951). See McGuiness, "How To Take A Case Before The National Labor Relations Board," 257-258 (4th ed. 1976). Although the complaint may not allege a violation which occurred more than 6 months from the filing of a charge, the General Counsel may include in the complaint violations which have occurred subsequent to the filing of a charge, provided that these violations are related to or "grow out of" the timely filed charges. See *N.L.R.B.* v. *Fant Milling Company*, 360 U.S. 301, 309 (1959); *National Licorice Company* v. *N.L.R.B.*, 309 U.S. 350 (1940).

The allegation of Bothur's discharge clearly meets the test of being "closely related" to the timely filed charges in Case 1-CA-12137 which allege his suspensions. The charges therein allege, *inter alia*, that the Respondent's 30-day suspension of Bothur for the July 22, 1976, incident violated the Act. Arbitrator Mallet-Prevost found that the October 6, 1976, discharge of Bothur, which has never been alleged in any charge, "poses the same issue as that posed by the July 22 incident. They constitute, in fact, simply an add-on to that complaint."[21]

Moreover, the doctrine of equitable estoppel once again must come into play in this situation. It is readily conceded by the Respondent in its "Memorandum of Law in Support of its Motion for Summary Judgment" at p. 6, that "the Union requested, and the Respondent agreed, that the propriety of [Bothur's] discharge . . . be decided by Arbitrator Mallet-Prevost." It must be concluded then that the Union considered Bothur's discharge as part and parcel of the prior actions taken against Bothur, and that no further charge need be filed on Bothur's behalf. For all of these reasons, I conclude that the complaint may properly include the allegation of Bothur's discharge since it is related to the timely filed charge involving Bothur's 30-day suspension.

3. The General Counsel and Union contend that the arbitrator's awards are repugnant to the purposes of the Act and ought not be deferred to. The Respondent contends that Board policy, as promulgated in *Spielberg Manufacturing Company*, 112 NLRB 1080, 1082 (1955), requires that the Board defer to the arbitrator's conclusion that Bothur's suspensions and discharge were for insubordination, and Nash's discharge was for violating the parties' collective-bargaining agreement and the Respondent's rules by soliciting union membership during working hours.

As part of its efforts to advance the arbitral process, the Board has long deferred to arbitration awards in cases in which the criteria as laid down in *Spielberg*, i.e., (1) the arbitration proceedings appear to have been fair and regular; (2) the parties agreed to be bound by arbitration; and (3) the arbitration award is not clearly repugnant to the purposes and policies of the Act, have been met. Since the *Spielberg* decision, the Board has added a fourth criteria, i.e., that the issue involved in the unfair labor practice case before the Board must have been presented to and considered by the arbitrator. *Raytheon Company*, 140 NLRB 883 (1963). However, the mere existence of an arbitration award does not oust the Board of its jurisdiction to adjudicate claims of unfair labor practices based on the same subject matter as the award. *N.L.R.B.* v. *Joseph T. Strong d/b/a Strong Roofing & Insulating Co.*, 393 U.S. 357, 360-361 (1969). It is well established that the Board has considerable discretion in deciding whether to respect an arbitration award where it comports with the fundamental aims of the Act, or to reject it where it violates the intent of the Act's provisions.

In the instant proceeding, it is agreed by the parties that the arbitration proceedings before Mallet-Prevost were fair and regular, that the parties agreed to be bound by the arbitration, and that the issue before me had been presented to and considered by the arbitrator. In fact, as stated previously, the parties, at the hearing, stipulated to accept and be bound by the arbitrator's findings of fact in both proceedings. Query: Was the arbitrator's conclusions of law repugnant to the purposes of the Act?

1. The legality of the March 1976 no-distribution rule

The basis for the repugnancy contention is grounded in the belief by the General Counsel and the Union that, insofar as Bothur is concerned, the arbitrator failed to conclude that rule 7, the no-distribution rule promulgated by the Respondent on March 18, 1976, discussed *supra*, was unduly broad in scope and, therefore, violative of Section 8(a)(1) of the Act. The Board has long held that a no-distribution rule is presumptively invalid on its face, as applied to employees who may wish to distribute union literature, if its reach is not limited to working time and to working areas of the plant. *Stoddard-Quirk Manufacturing Co.*, 138 NLRB 615 (1962). Certainly, therefore, it is clear in the instant case that rule 7 which purports to prohibit all distribution of "unauthorized pictures, posters, or literature, including Union, political and discriminatory material on company property" is overly broad, and I find that the Respondent has violated Section 8(a)(1) of the Act by maintaining such a no-distribution rule.[22] We look now to see how the arbitrator chose to view rule 7 in its relationship to Bothur's two suspensions and his later discharge.

2. The 3-day suspensions

Following the institution of rule 7, the Company took a stronger position in "ordering," rather than "asking," the employees not to distribute inside the plant. Between March and June 1976, several confrontations on this issue occurred. Finally, on June 29, 1976, the Company issued employee reports to Bothur and 29 other employees for distributing union material inside the plant and refusing to move when ordered. On July 21, 1976, Bothur and some other employees were distributing at point C. Personnel advisor Bryka asked them to move outside in

[21] The arbitrator's conclusion was that Bothur's 30-day suspension was the result of his general behavior on July 22, 1976, primarily for refusing to terminate a grievance meeting when requested, and the discharge on October 6, 1976, was also for refusing to terminate a grievance meeting.

[22] See *N.L.R.B.* v. *Magnavox Company of Tennessee*, 415 U.S. 322 (1974).

accordance with the prior "agreement" reached in 1974, but they refused. As a result of this incident, Bothur and six other employees received a 3-day suspension on July 24, 1976, and 40 other employees were issued employee reports.

After noting that the Union's contention is "that the new Rule 7 is an unlawful no-distribution rule and that Bothur was disciplined for violating the Rule," the arbitrator concluded that "[the rule] is a limitation upon the *kinds* of material that may be distributed on Company property. It has nothing to do with *places* of distribution on Company property—which was the whole point of Bothur's confrontation with management representatives. I find that Bothur's 3-day suspension had nothing to do with Rule 7." Arbitrator Mallet-Prevost determined that Bothur's suspension was a result of his ignoring the Company's warning and persisting to distribute at point C. He indicated that if Bothur believed that the agreement did not require him to leave, he should have obeyed the order and submitted a grievance. The arbitrator noted that:

> The Union seems to argue that if there were an agreement as to acceptable places to distribute, it would be unenforceable because it would be in the nature of a waiver of employee rights.[23] This would reduce the whole course of the 1974 negotiations between the Company and the Union to a complete charade. I think it represents an altogether unrealistic view of the negotiations and their result.

The arbitrator also rejected the Union's argument that the facts in the instant case fall within that line of cases "holding that an employee cannot be disciplined for insubordination because he refuses to obey in order to cease a protected activity when the order is based upon such a rule, or upon some other whim of the employer." He also noted that:

> this is not a situation where Bothur's statutory right to distribute at point C is so clear that no consideration of balancing need enter the picture. . . . [I]n the 1974 negotiations the Company interposed reasonable statements of concern that distribution at Point C interferes with the effectiveness of its operations. The Union, on the other hand has neither shown nor claimed any practical reasons why distribution at Point D (outside) renders the Stewards' efforts to distribute any less effective than at Point C (inside).

The arbitrator then concluded that Section 7 rights are not absolute [citing *Magnavox, supra*], and that the Board could conclude that considerations of production or discipline may make control necessary [citing *N.L.R.B.* v. *Republic Aviation Corporation*, 324 U.S. 793 (1945)].

With all due respect for Arbitrator Marcel Mallet-Prevost, I must disagree with his conclusion. As the Board stated in *Daylin Inc., Discount Division d/b/a Miller's Discount Dept. Stores*, 198 NLRB 281 (1972):

> . . . where a no-solicitation rule goes beyond [valid] limits . . . it is an unlawful infringement upon the employee's freedom to solicit their fellow employees for (or against) union representation. The rule in such case can provide no justification for the [suspension] of an employee who violated it. Therefore, if an employee is [suspended] for soliciting in violation of an unlawful rule, the [suspension] also is unlawful unless the employer can establish that the solicitation interfered with the employees' own work or that of the other employees, and that this rather than violation of the rule was the reason for the [suspension].

Such was not the case herein. The facts, by which I am bound by stipulation of the parties, do not reveal an interference with production or a desire to maintain discipline, either of which may make controls necessary. The mere assertion that the rule has this purpose is insufficient to establish that it is actually "necessary" for the employer to prohibit union handbilling by his own employees. I do not find that such necessity has been shown here. Under the circumstances, I find that the arbitrator's determination in this regard was repugnant to the purposes of the Act, and I conclude that the Respondent's attempt to enforce an unlawful no-distribution rule by imposing a 3-day suspension on Bothur and six other employees, and by disciplining 69 employees with its issuance of employee reports against them, was a violation of Section 8(a)(1) and (3) of the Act.[24]

3. Bothur's 30-day suspension and discharge[25]

When Bothur came to work on July 22, 1976, he spoke with his foreman about his intention to go to the

[23] No doubt the Union was well aware of the Supreme Court's ruling in *Magnavox, supra*, wherein it was held that a union cannot waive, in a bargaining contract, the employee's rights to distribute material during nonworktime in nonwork areas.

[24] During the course of the hearing, as stated *supra*, I viewed and went through the Respondent's premises and buildings, inside and outside in the company of attorneys DiCiero, Kestell, and Wells. This onsite inspection was requested by the General Counsel to aid me in my determination as to whether point C, discussed *supra*, is a work area or a nonwork area, and the Respondent acquiesced in that request. I stated on the record at that time that this inspection "may or may not prove helpful in reaching the conclusions I will reach in my decision." My inspection encompassed seven gates at the Pratt-Whitney plant in East Hartford, and one gate at the Power Systems Division in South Windsor. In each instance I observed the area outside the particular entrance at which point the union stewards had been handbilling employees, and the area inside the entrance doors, better known as point C, from which point Bothur and the others attempted to handbill employees but were prevented from doing so and disciplined for their efforts. In light of my foregoing findings that the Respondent had violated the Act by maintaining and enforcing an unlawful no-distribution rule, it is of little moment at this time for me to decide whether the area involved is or is not a work area. However, for the sake of thoroughness, I forthrightly state for the record that, based on my observation, the areas viewed by me are passageways and entranceways giving access to work areas by employees, but are not work areas *per se*. In each instance, a distance of approximately 60 feet must be traversed before a true work area is reached; and, in at least one area, the Respondent has placed a bulletin board for company notices to be viewed by employees, thereby designating an area as a gathering place for employees, and not a work area. I find, therefore, that at all times material herein, the union stewards were leafletting on nonworktime, as stipulated by the parties, in nonwork areas.

[25] The events detailed, *infra*, are gleaned from the arbitrator's findings of fact by which I am bound by stipulation of the parties.

South Windsor plant in order to complete some unfinished business involving a grievance. Initially, Bothur was told he could go, but that he would have to wait until the afternoon. However, Bothur was eventually told that he could not go on that day.

At this point, Bothur requested to see his shop steward, Danny Brandt, in order to discuss the problem of Bothur going to South Windsor. Bothur specifically asked for Brandt because Bothur also wished to discuss the confrontation he had the day before regarding the distribution, and Brandt was familiar with the "flier distribution problem." However, Shop Steward Steve Roberts was sent.

Roberts and Bothur began discussing the flier distribution problem around 1:30 p.m. Since Roberts was unfamiliar with the flier distribution problem Bothur "spent a lot of time filling him in" on the matter. They were also able to discuss the South Windsor situation. At approximately 2 p.m., Foreman Spafford told the two men that they had "ten more minutes." However, at this point, Bothur had not discussed his grievance concerning his not getting the steward he asked for. At or about 2:20 Spafford returned and told the two to break it up and return to work. "Bothur told foreman Spafford he did not feel this interruption of the grievance discussion was proper procedure on the part of the Company, adding, '. . . under Section 8(a)(2) of the NLRA . . . I consider this an interference with the administration of the Union.'" Since the grievance procedure was being broken up, Roberts attempted to proceed with the grievances Bothur had, by handing Spafford an "Oral Step Fact Sheet." However, Spafford declined to proceed at that point and said he would discuss the grievances on the next day.

Spafford eventually returned with General Foreman Christensen who told the men to return to work. Christensen testified that he wanted the pregrievance discussion ended because he had to issue the 3-day suspension to Bothur that afternoon and wanted to do it before 3 p.m. that day. Sometime after Christensen's request to terminate the meeting, Roberts did return to work.

After Roberts returned to work, Spafford called Bothur over to his desk to give him the 3-day suspension for the July 21 incident. Bothur looked at it, threw it down, and walked away. In accordance with plant practice, Spafford attempted to read the suspension notice to Bothur in front of another supervisor. Bothur refused to meet with them in this "2 on 1" situation unless he had his shop steward. After much discussion on the issue, Christensen asked the guards to remove Bothur. Although Bothur initially refused to follow the request of the guards he did accompany them to their headquarters and clocked out at 3:30 p.m.

Bothur was to begin a 2-week military leave assignment the next day, July 23, 1976, and then take his vacation until August 16, 1976. During his vacation he received the following letter:

> Because of your grossly insubordinate conduct on Thursday, July 22, 1976, when you were being advised of a three-day suspension extending from August 16 through 18, 1976, I have been requested by your supervisor to inform you of an additional suspension of one month starting August 16, 1976. You will be allowed to return to work at the beginning of your regular shift on Monday, September 20, 1976, with a clear understanding that a further repetition of your previous conduct will result in more severe disciplinary action, including dismissal.

Arbitrator Mallet-Prevost found that Bothur's 30-day suspension was based on the whole course of his conduct on July 22, 1976, and not just because of his conduct when he was being advised of the 3-day suspension. The arbitrator expressly did not find that the time allotted for the pregrievance discussion was reasonable or unreasonable. He felt that this was not the issue; rather, the issue was whether Bothur's refusal to return to work was insubordination. He concluded that unless the foreman has assumed a patently extreme position in his estimate of "reasonable" time for the discussion, the steward and the employee should comply with the order and file a grievance if they disagree with the foreman.

Bothur returned to work on September 20, 1976. On October 5, the Company distributed merit ratings to the employees. Bruce Easter, who had a complaint about his rating, called Bothur as his shop steward. They began discussing the problem about 2:50 p.m., but stopped at 3:15 p.m., since they decided to clean up and punch out for the day. Before leaving, Bothur told Foreman Roy that he still needed more time and would meet with Easter the following morning. The foreman felt he had given them enough time already, and that 10 minutes more should be sufficient.

The next morning, on October 6, Bothur and Easter resumed their discussion. However, after approximately 15 minutes, Foreman Roy came over and indicated that they were taking too much time. The foreman told them that he would give them another 5 or 10 minutes, and, after that time elapsed, he returned and requested that they terminate their discussion. Bothur responded that they were "negotiating equals"[26] while Bothur was acting as a shop steward, and Roy could not order them to break up their grievance discussion. When Bothur refused to go back to work Roy informed him that he was suspended indefinitely. Eventually, Bothur was escorted out of the plant, and was discharged on October 11, 1976.

The arbitrator found that the facts of the October 6 incident "pose the same issue as that posed by the July 22 incident. They constitute, in fact, simply an add-on to that incident." For the same reasons, he found that Both-

[26] The following is a quote of fn. 20 in the arbitrator's decision:

> With respect to the "negotiating equal" principle, a grievance concerning the interruption of a grievance discussion between Steward Bothus and a grieving employee was settled in June 1976 at Step-1 with this notation;
>
> The company recognizes that you as a steward are a negotiating equal, therefore interruptions will be limited to reasonable requests. This settlement reflects the substance of the Article VII, Section 8, of the Contract relating to the Grievance Procedure, i.e. that interruptions of shop stewards' work assignments "be as infrequent and of as short duration as the grievance or complaint reasonably requires."

ur's conduct was insubordinate and that he was properly discharged.

I view Bothur's 30-day suspension and subsequent discharge in an entirely different light from his 3-day suspension. In the latter situation, Bothur was being disciplined, in violation of the Act, for engaging in a protected union activity. Such was not the case in the former situations. While the events of July 22 and October 6, 1976, involving Bothur, began in the context of good labor-management relations, it did not progress in that vein. And the fault lies strictly on Bothur's side. The arbitrator found, and rightly so, that the Respondent was not short-timing either pregrievance discussion, but was merely attempting to hold the discussion down to a reasonable time. In each case, additional time was granted by the Respondent, but to Bothur that was not enough. "He undertook to turn the plant floor into a forum for a pseudo-legal debate . . . ." (The arbitrator's words.) Under the circumstances, the Respondent had no other choice but to discipline Bothur for his grossly insubordinate conduct, and such discipline was in no way violative of the Act. I, therefore, am dismissing that portion of the complaint which alleges the 30-day suspension and discharge of Bothur as violations of the Act.

4. The Nash discharge

As stated above, the General Counsel and the Union do not dispute the fact that Nash engaged in union solicitation proscribed by article IV of the collective-bargaining agreement and company general rule 5. Their contention is that the Respondent disparately enforced its no-solicitation rule against union adherents. The question before the arbitrator was whether the Respondent could properly enforce those provisions more stringently against Nash than it enforced the same provisions against other employees who engaged in other kinds of worktime solicitations which were similarly proscribed. Employee witnesses testified that the rule was regularly violated by employees who engaged in solicitation of a personal nature, i.e., collections for flowers for a funeral or for sick employee, but these employees were never disciplined. Management personnel testified that except for public service appeals such as United Way, the Company did not countenance any other type of solicitation on worktime and dealt harshly with it to the point of discharge. Inasmuch as these are the findings of fact by the arbitrator leading to his conclusion that the testimony presented was not of sufficient weight to support the proposition that the Respondent has a policy of discriminating against union solicitors, it is not for me to overrule said findings and I must defer to his award. I find that all of the criteria and standards required for deferral under *Spielberg* have been met; that, on its face, the arbitration was fair and regular; that the arbitration was reached by a procedure to which the parties agreed to be bound; and that the award is not repugnant to the policies of the Act. I, therefore, conclude that the allegation in the complaint pertaining to Nash's discharge be dismissed.[27]

[27] *United Parcel Service, Inc.*, 232 NLRB 1114 (1977).

C. *The 1979 Events*

Paragraphs 8(d) through (h) of the amended complaint, which issued on July 24, 1979, allege various violations of the Act supposedly committed by the Respondent at its Hamilton-Standard plant during January and February 1979. The background for these allegations is as follows: On January 12, 1979, the Respondent discharged two employees, Michael Londraville and Gerald Gregoire, for allegedly soliciting union membership during working hours.[28] Commencing shortly thereafter and continuing practically on a daily basis for the next couple of weeks, a series of incidents occurred involving costly damage to the Respondent's products.[29] Also, damage was inflicted on automobiles owned by foremen in the Respondent's parking lot, and one foreman claimed that he had been run off the road by another car while on his way home from work. The Respondent, suspecting sabotage, assigned two investigators from its International Security Investigation Department (ISID), Thomas Fischer and Frank Collins, to conduct an investigation of the incidents. The record shows that between January 15 and March 15 1979, approximately 100 employees were interviewed by the two investigators. It was these interviews which broadened out into matters other than the suspected sabotage, that sparked the filing of charges resulting in the following allegations in the complaint:

1. The Respondent discriminatorily denied a solicitation request for the families of Londraville and Gregoire in order to discourage union activity. (Par. 8(d) of the complaint.)

On January 18, 1979, Richard Lay, an employee, filled out a preprinted solicitation request, requesting permission to make a solicitation for funds to help out the families of Londraville and Gregoire, and turned it in to General Foreman Fitzgerald. Fitzgerald advised Lay on January 22, 1979, that his request had been denied by Ed Hotchkiss, Respondent's superintendent, with Hotchkiss' note attached, "Gene Fitzgerald solicitation request will be approved only for present employees for such occasions as retirement, deaths." In questioning Fitzgerald about the refusal, Lay pointed out that, to his knowledge, this was the first time that a solicitation request had been denied, and that he would like to see a written response. Fitzgerald stated that the Company was within its rights to forbid a solicitation, that he would comply with Lay's request for a written response, but "wasn't Lay sticking his neck out, and hadn't Lay told him that he was going to avoid situations like that."[30] Whereupon,

[28] On August 23, 1979, Arbitrator Mallet-Prevost issued a decision in this matter finding the Respondent in violation of the Act, and ordered reinstatement of the two employees.

[29] During the entire year of 1978, only one similar incident was ever reported.

[30] Lay was referring to some prior discussions he had had with Fitzgerald regarding the atmosphere in the plant and Fitzgerald had assured him that his employment was not endangered but that he was concerned with the company Lay was keeping. After identifying on direct examination the employees he associated with, Lay stated that none of them were at that time officially connected with the Union.

Lay agreed to withdraw his request. At this point, Lay's testimony veers off to an entirely different line of questioning concerning three interviews that Lay is subjected to by the ISID agents. Although the interrogation at these interviews involved Lay's solicitation request along with questions regarding the possible acts of sabotage that had occurred at or about that time, nowhere in the complaint are these interviews alleged to be violative of the Act, nor do I find them to be. The crux of the allegation, therefore, lies in the denial of the solicitation request for discriminatory reasons in order to discourage union activity. Yet, at no time did Lay state that he was soliciting on behalf of the Union for the benefit of two union activists. His testimony states clearly that he had known Londraville and Gregoire for a number of years, that they were coworkers of his, and that, on "[his] own initiative," he had "submitted the application to defray any hardship due to the families of Mr. Gregoire and Londraville following their dismissal." While the General Counsel seeks to establish that the denial of the request was for discriminatory reasons, the evidence presented in that vein is only Lay's statement "[T]hat this was the first time to my knowledge that a solicitation request had been denied." No concrete evidence was offered by General Counsel to show this to be true, and even when Lay was asked on direct examination whether he had ever made a request for solicitation before, his response was "I believe I had," but no followup question was asked as to whether the request or requests were granted or denied. Certainly the burden of proving discriminatory motivation in denying the request lies with the General Counsel, especially in the face of Fitzgerald's statement to Lay that the Company was within its rights to forbid a solicitation. The mere fact that a preprinted request form requiring approval is available to employees shows that the Company is amenable to solicitations but reserves the right to reject them.[31] In the absence of evidence to the contrary, I find that the General Counsel has failed to ascribe a discriminatory motive to the Respondent's actions in denying Lay's solicitation request, and, therefore, I am dismissing this allegation of the complaint.[32]

2. The Respondent suspended two employees for refusing to respond during an investigatory interview after denying them the assistance of a shop steward.[33] (Pars. 8(e) and (f) of the complaint.)

On or about January 31, 1979, Henry Savioli, an employee at Hamilton-Standard, was called down for questioning by ISID agents Collins and Fischer. They advised him that they were investigating possible sabotage at the plant and also an unauthorized collection for Londraville and Gregoire. Savioli did not request union representation. When asked by the agents whether he knew of the collection, and whether he contributed to it, and to whom, Savioli refused to answer. They told him that he was not cooperating with an official investigation and that he would be called down again. With that, they ended the interview. On February 7, 1979, Savioli was advised by his foreman that the agents wanted to see him again. This time he told the foreman that he wanted a union steward to be present, and when he arrived at the ISID office, the agents introduced him to union steward Dave Coach. At this point the agents advised Coach that he was present merely as an observer and could not participate.[34] They then proceeded to question Savioli in the same manner as previously, and Savioli told them that he had no knowledge of the collection and he did not contribute to it. The agents then asked Savioli to sign a statement and he refused. Savioli was then escorted to General Foreman Fitzgerald's office and told that he was being suspended indefinitely for not cooperating in the investigation.[35] The next day, Savioli requested permission to come back to work and it was granted. Upon arrival at the plant, he was brought to the ISID office and questioned once again. Coach was present but again advised of the "ground rule." The same answers were given to the same questions, and again Savioli refused to sign a statement. Upon completion of the meeting, Savioli returned to work.

On February 8, 1979, Dawn Diduk (nee Carney) was called down for questioning by Fischer and Collins. When they informed her that she would be questioned about suspected sabotage and unauthorized collection, Carney told them she wanted a union steward present. Coach was brought down and in Carney's presence, he was told by the agents that he was there only to observe and not to talk to Carney.[36] It appears that Carney's responses did not satisfy the agents and so she was advised that disciplinary action would be taken against her. After dismissing Coach, the agents escorted Carney to the general foreman's office and he told her that she was suspended indefinitely for not fully cooperating. The next day Carney returned to the plant, and in a meeting with the agents and Coach, in the ISID office, Carney answered the agent's questions. However, when Carney was asked to sign a statement, she refused, and the agents threatened her with a more severe disciplinary action. They advised her to speak to Coach, and directed them to an area outside the door to the office to discuss

[31] There was evidence to the effect that an unauthorized collection for the two employees was conducted by Andrew Sullivan, discussed *infra*.

[32] The cases cited in the Union's brief are inapposite in that in each case cited a direct relationship existed between the union activity engaged in by the employees involved and the employer's actions therein. No such causal relationship was shown in the instant case between Lay, who was not seeking to engage in union activity, and the Respondent, who denied the request, albeit for a spurious reason.

[33] Allegations 8(e) and (f) of the amended complaint state that the employees "sought the assistance of" union stewards. The General Counsel's motion at the hearing, to amend the language to read "was denied the assistance," was granted.

[34] On cross-examination, Savioli testified that he wanted to have a conversation with Coach before he went in for questioning, but because of what was said by the agents to Coach, he felt he did not have a chance to do it.

[35] Although Coach accompanied Savioli to Fitzgerald's office, he did not enter the office with Savioli. The agents told him that he was no longer needed and he went back to work.

[36] At one point in the interview, Carney sought to ask Coach a question but Fischer reminded her that Coach was there only to observe.

it.[37] When they returned to the office, Carney still refused to sign the statement for the reason that her father told her not "to sign anything I didn't know all about it." Said refusal ended the interview and Carney returned to work. No further discipline was meted out to her.

In *N.L.R.B.* v. *J. Weingarten, Inc.*, 420 U.S. 251 (1975), the Supreme Court upheld the Board's determination that Section 7 of the Act gives an employee the right to insist on the presence of his union representative at an interview which he reasonably believes will result in disciplinary action. And, in *Climax Molybdenum Company, a Division of Amax, Inc.*, 227 NLRB 1189 (1977), the Board states that the employee's right to representation at such an interview includes the right of the employee to confer with the union representative before the interview. The General Counsel and the Union contend, therefore, that when the Respondent placed restrictions on the union steward's presence, this constituted a violation of the employee's Section 7 rights. I agree. Despite the Respondent's protestations that a union steward was provided to both Savicli and Carney, and that Carney was permitted to converse with Coach during her last interview, it appears quite clear that the Respondent's resort to the obstructionist tactics at the very inception of the interviews was calculated to prevent the union steward from offering any assistance whatsoever to the employee. It certainly did not satisfy the Supreme Court's hope that when an employee is confronted by an employer conducting an investigatory interview which may result in disciplinary action, he should be permitted the assistance of a union representative so that all the salient facts surrounding the incident which occasioned the interview could be brought to the surface. The mere presence of a union steward does not aid sufficiently to elicit all of the required information. I am firmly convinced that the Respondent's effort to preclude both an advanced discussion and an intermittent discussion during the interview between the employee and a union steward is an attempt to thwart one of the purposes approved in *Weingarten*. As stated in *Climax Molybdenum Company, supra*, "The right to representation clearly embraces the right to prior consultation." The mere fact, as the Respondent points out, that Carney was permitted to confer with Coach toward the end of the interview does not detract from the issue. That conference, outside the open door of the ISID office, was urged on Carney and Coach by the ISID agents for the purpose of getting Carney to sign the statement. And, to prove the value of such discussion as hoped for in *Weingarten*, Carney's subsequent response to the agents was acceptable, albeit she did not sign the statement. Accordingly, I find that the Respondent's statements to the union steward, that he was merely an observer and could not participate in the interview, which the employees reasonably believed might result, and in fact did result, in disciplinary action, violated Section 8(a)(1) of the Act.

[37] The General Counsel tried to show that the Respondent's agents were engaged in surveillance of the conversation by demonstrating how close they were to Carney and Coach and that they kept the door open and constantly walked past them. No surveillance is alleged in the complaint, and I do not find it necessary to draw any conclusions regarding that phase of the incident.

3. The Respondent, by its ISID agents, interrogated employees in violation of their Section 7 rights. (Par. 8(g) of the complaint.)

The crux of this allegation lies in the investigatory interviews of employees conducted by the Respondent to determine whether Richard Durkin, an employee, had been soliciting union membership on working time in working areas, and, whether he was using his position as leadman[38] to discriminate against employees who did not join the Union. The investigation was conducted by ISID agents Fischer and Collins, either singly or together, and they interviewed numerous employees in Durkin's department, generally female. According to Fischer's testimony, he would identify himself to the employee, tell the employee the purpose of the interview (as stated above), then ask the employee if he or she had any knowledge of the matters being investigated, and if the employee admits to having been solicited by Durkin, where and when did the solicitation take place, and did the employee join the Union. The interview then was reduced to writing and offered for signature to the employee. Fischer further testified that the Durkin investigation came about because part of Fischer's responsibility as a corporate investigator was to investigate violations of company rules, as they came to his attention.

The General Counsel contends that these interrogations were inherently coercive in that they were conducted in an atmosphere of union animus and demonstrated disparate enforcement of the Company's no-solicitation rule against union activity. Its witnesses were Pushplata Heda, Sheila Rossi, and Geraldine Anderson. Heda testified that Fischer assured her at the outset of the interview that as long as she answered truthfully no disciplinary action would be taken against her. Fischer also told her that he was interested in knowing whether Durkin ever asked her to join the Union and whether she felt that Durkin was giving preferential treatment to union members over nonunion employees. When Heda responded to Fischer that Durkin had asked her on several occasions, both on working time and after work to join the Union, Fischer then asked her if she did join. Her response to Durkin was always "No," and that is what she told Fischer. She also testified that she felt Durkin favored union member employees over others. She was then asked to sign a statement to that effect, and she did. Rossi testified that Fischer told her that he was investigating the damaged car in the parking lot,[39] and that he was also investigating Durkin.[40] And so, accord-

[38] The parties stipulated that Durkin was not a supervisor, and that he was a member of the bargaining unit.

[39] Rossi's response to this was that she knew nothing about that incident.

[40] On direct examination the General Counsel refreshed the witness' recollection of what she testified to at Durkin's arbitration, and that was that Fischer had told her that he was investigating the Union and that Durkin was involved. Yet on cross-examination, in response to the question, "He never told you, did he, that they were investigating the union," Rossi said, "They told me that they were investigating Dick Durkin." In-

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There can be no question but that an employer has the right to establish rules to govern the conduct of its employees on company time in a work area. Equally true is the maxim that an employer has the right to investigate to determine whether such rules have been violated by employees. And, so long as the rule, whose breach is the subject of the investigation, is a valid one, and the employees who are interviewed are advised at the outset of the purpose of the interview, and assured of no reprisals, then it cannot be said that such investigations are inherently coercive. It is also an accepted fact that any action engaged in by any employee on company time in a work area which is detrimental to the efficient operation of the plant is subject to investigation by an employer.

In the instant case, such an investigation was conducted, and the uncontroverted evidence revealed that all of the safeguards listed above were complied with. Thus, I do not find that the interviews were conducted in an atmosphere of union animus. Also, while the General Counsel does not contend that the no-solicitation rule in effect in 1979 was involved, his argument is that it was discriminatorily applied; i.e., the investigation only sought to inquire about union activity. Yet, no evidence was offered by any of the three witnesses as to any other type of solicitation engaged in by other employees in violation of the rule. In these circumstances, I do not find that Heda, Rossi, and Anderson were interrogated in violation of their Section 7 rights, and I shall dismiss that allegation of the complaint.

4. The Respondent, by its agent Ray Marcotte, interrogated an employee and thereby interfered with his Section 7 rights. (Par. 8(h) of the complaint.)

Andrew Sullivan, an employee in department 331 at the Hamilton-Standard plant, testified that on February 9, 1979, while at work, he was approached by Ray Marcotte, a foreman and an admitted supervisor, and told that an investigation was going on about an unauthorized solicitation that Sullivan had engaged in on behalf of Gregoire and Londraville. Marcotte said, according to Sullivan, that he did not want to see Sullivan get in trouble, and, if Sullivan were willing to go down and talk to the ISID agents and give them information concerning the suspected sabotage at the plant and the damage to the cars in the parking lot, discussed *supra*, Sullivan could save his job. Sullivan further testified that a couple of weeks later he was called down to the ISID office; agents Fischer and Collins advised him that he was accused of having engaged in an unauthorized solicitation of funds for Gregoire and Londraville, and that they would appreciate it if he would cooperate and give the agents information about the suspected sabotage; they then proceeded to interview Sullivan during which time Sullivan admitted the solicitation[41] but denied any knowledge of the sabotage.

Marcotte testified that Sullivan had approached him[42] to ask if Marcotte could help him because he, Sullivan, was in trouble regarding an unauthorized solicitation. Marcotte volunteered to try, and he then approached the ISID agents who confirmed the fact that Sullivan was under investigation for the solicitation. When Marcotte asked the agents "What do you want out of this guy," the agents told Marcotte that they wanted the truth about the solicitation and the suspected sabotage, but that they could make no deal. It was then, according to Marcotte's testimony, that he, Marcotte, approached Sullivan and told Sullivan what the agents knew about the solicitation and what they wanted to know about the sabotage. According to Marcotte, no "deal" was offered.

Although the parties to this dispute appear to place a heavy emphasis on the question of whether a "deal" was in fact offered to Sullivan, I do not find that to be of any great import. What I do find important is whether the Respondent by interrogating Sullivan regarding both the solicitation and the sabotage was in some way interfering with Sullivan's Section 7 rights. If the purpose of the Respondent's questioning was to inquire into the union activity or protected concerted activity of Sullivan's actions, it might very well have exceeded the bounds of proper interrogation and been violative of the Act. But, I do not find that such was the case here. As stated previously, an employer has the right to establish legitimate rules to govern the conduct of its employees and to investigate violations of those rules. In the instant case, the Respondent became aware of an unauthorized solicitation engaged in by Sullivan and certainly had the right to investigate it. At the same time, the Respondent was anxious to unearth whatever information it could gather regarding the suspected sabotage at the plant, certainly not a protected concerted activity, and certainly not a protected union activity. Under the circumstances, the Respondent sought to interrogate many employees regarding the sabotage, including Sullivan. Whether it

asmuch as neither Heda nor Anderson testified that the ISID agents stated they were investigating the Union, I find that Fischer's inquiries of Rossi were limited to Durkin's suspected wrongdoings and did not extend to other union matters.

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it.[37] When they returned to the office, Carney still refused to sign the statement for the reason that her father told her not "to sign anything I didn't know all about it." Said refusal ended the interview and Carney returned to work. No further discipline was meted out to her.

In *N.L.R.B.* v. *J. Weingarten, Inc.*, 420 U.S. 251 (1975), the Supreme Court upheld the Board's determination that Section 7 of the Act gives an employee the right to insist on the presence of his union representative at an interview which he reasonably believes will result in disciplinary action. And, in *Climax Molybdenum Company, a Division of Amax, Inc.*, 227 NLRB 1189 (1977), the Board states that the employee's right to representation at such an interview includes the right of the employee to confer with the union representative before the interview. The General Counsel and the Union contend, therefore, that when the Respondent placed restrictions on the union steward's presence, this constituted a violation of the employee's Section 7 rights. I agree. Despite the Respondent's protestations that a union steward was provided to both Savioli and Carney, and that Carney was permitted to converse with Coach during her last interview, it appears quite clear that the Respondent's resort to the obstructionist tactics at the very inception of the interviews was calculated to prevent the union steward from offering any assistance whatsoever to the employee. It certainly did not satisfy the Supreme Court's hope that when an employee is confronted by an employer conducting an investigatory interview which may result in disciplinary action, he should be permitted the assistance of a union representative so that all the salient facts surrounding the incident which occasioned the interview could be brought to the surface. The mere presence of a union steward does not aid sufficiently to elicit all of the required information. I am firmly convinced that the Respondent's effort to preclude both an advanced discussion and an intermittent discussion during the interview between the employee and a union steward is an attempt to thwart one of the purposes approved in *Weingarten*. As stated in *Climax Molybdenum Company, supra*, "The right to representation clearly embraces the right to prior consultation." The mere fact, as the Respondent points out, that Carney was permitted to confer with Coach toward the end of the interview does not detract from the issue. That conference, outside the open door of the ISID office, was urged on Carney and Coach by the ISID agents for the purpose of getting Carney to sign the statement. And, to prove the value of such discussion as hoped for in *Weingarten*, Carney's subsequent response to the agents was acceptable, albeit she did not sign the statement. Accordingly, I find that the Respondent's statements to the union steward, that he was merely an observer and could not participate in the interview, which the employees reasonably believed might result, and in fact did result, in disciplinary action, violated Section 8(a)(1) of the Act.

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[37] The General Counsel tried to show that the Respondent's agents were engaged in surveillance of the conversation by demonstrating how close they were to Carney and Coach and that they kept the door open and constantly walked past them. No surveillance is alleged in the complaint, and I do not find it necessary to draw any conclusions regarding that phase of the incident.

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chose to offer Sullivan a "deal" is not an action in violation of the Act, for its purpose was not to, in any way, inquire into union activities, but rather to enable it to bring to justice the culprits who had engaged in a criminal activity, whether they were union adherents or not. I do not find such interrogations violative of the Act, and I, therefore, shall dismiss this allegation.

5. The Respondent, by its agent, Larry Brown, interrogated employees about their protected concerted activities. (Par. 8(c) of the complaint.)

Doreen Martin and William Boccalatte, employees in department 420 at the Pratt-Whitney plant, testified that they were called down to the ISID office, separately, and questioned by an agent.[43] Both stated that they were asked questions about a female employee;[44] that the agent wanted to know if they were solicited for union membership by steward Hipkins, a shop steward, during working hours; and did they belong to the Union. Both testified that Hipkins did not solicit them during working hours. Martin said she was a union member, but Boccalatte said he was not. Martin was not given a statement to sign, but Boccalatte was, and he signed it. This is the extent of the testimony of these two witnesses. Neither Brown nor any other agent was called by the Respondent to rebut their testimony.

Normally, this reviewer of facts, when faced with uncontroverted evidence of interrogation of employees involving their union predilections, comes to the conclusion that such actions on the part of an employer constitute interference with the Section 7 rights of employees and are violative of Section 8(a)(1) of the Act. However, in the instant case, while I am well aware of the unstable labor relations that exist and have existed for many years between the Union and the Respondent, I find it difficult to resolve this particular issue in favor of the Union. In my analysis I have taken into consideration several factors; namely, the immensity of the plant, the limitations of this allegation, and the relationship of this allegation to the other allegations in the complaint. First the Respondent employs approximately 35,000 persons at the Pratt-Whitney plant, and only 2 were called to testify regarding interrogation of their union preferences. In that vein, I must state that I am in a quandary as to why these two were selected to testify; in my observation of the witnesses, I found one to be of a limited capacity to understand fully the implications of the questioning, and the other to have a speech impediment which quite naturally would not allow him to be a *force majeure* on the side of the Union. Secondly, while the allegation claims to cover "several occasions in January and February, 1979," actually only two incidents are offered in evidence, each lasting about 20 minutes, with no repercussions occurring. And, thirdly, whereas all of the other allegations in paragraph 8 of the complaint, except for those relating to the distribution of union literature, refer to incidents allegedly occurring at Hamilton-Standard, this and this alone refers to the Pratt-Whitney plant. Therefore, in all of the circumstances surrounding this allegation, I find that these two incidents are so isolated in nature as to be insufficient to warrant the finding of a violation of the Act. I shall, therefore, dismiss this allegation of the complaint.

[43] Boccalatte recalls the agent to be Larry Brown, but Martin does not remember the agent's name.

[44] This line of questioning was not pursued by the General Counsel, and is wholly unrelated to any other testimony, and so I draw no conclusions from it at all.

CONCLUSIONS OF LAW

1. The Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Lodge 1746, International Association of Machinists and Aerospace Workers, AFL-CIO, and District 91, International Association of Machinists & Aerospace Workers, AFL-CIO, are, and have been at all times material herein, labor organizations within the meaning of Section 2(5) of the Act.

3. By maintaining and enforcing an invalid no-distribution rule, Respondent violated Section 8(a)(1) of the Act.

4. By threatening to discharge employees for distributing union literature and by ordering employees to cease distributing union literature, while attempting to enforce an invalid no-distribution rule, the Respondent violated Section 8(a)(1) of the Act.

5. By denying employees the assistance of union representatives as they were interrogated in the Respondent's internal security office, the Respondent violated Section 8(a)(1) of the Act.

6. By issuing disciplinary warnings to employees for distributing union literature, while attempting to enforce an invalid no-distribution rule, the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(3) and (1) of the Act.

7. By suspending employees for 3 days for distributing union literature, while attempting to enforce an invalid no-distribution rule, the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(3) and (1) of the Act.

8. By suspending employees for refusing to answer questions when they were interrogated in the Respondent's internal security office after they were denied the assistance of union representatives, the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(3) and (1) of the Act.

9. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

10. The Respondent has not engaged in other unfair labor practices as discussed above.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find it necessary to order the Respondent to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent having discriminatorily suspended the employees named in the attached notice marked "Appendix," I find it necessary to order it to make them whole for any loss of pay sustained by reason of the discrimination against them computed as prescribed in *F. W. Woolworth Company*, 90 NLRB 289 (1950), plus interest as set

forth in *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962), and *Florida Steel Corporation*, 231 NLRB 651 (1977).

Also in view of the numerous violations found herein, and the prior history of unfair labor practices found to have been committed by the Respondent herein, I find a broad order warranted and I shall so recommend.

Upon the foregoing findings of fact, conclusions of law, and upon the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[45]

The Respondent, United Technologies Corporation, East Hartford and Windsor Locks, Connecticut, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Maintaining and enforcing an invalid no-distribution rule.

(b) Threatening employees with discharge for engaging in union activities.

(c) Ordering employees to cease engaging in activities on behalf of the Union.

(d) Issuing disciplinary warnings and/or suspending employees for engaging in activities on behalf of the Union.

(e) Denying employees the assistance of union representatives when they are being interrogated by the Respondent's agents.

(f) Suspending employees for refusing to answer questions during interrogations after they have been denied the assistance of union representation.

(g) Discouraging membership in the above-named labor organizations, or any other labor organization, by suspending or otherwise discriminating against employees because they engage in union activities.

(h) In any other manner interfering with, restraining, or coercing employees in the exercise of their rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Make whole all of the employees named in the attached notice marked "Appendix" for any loss of pay sustained by reason of the discrimination against them, in the manner set forth in the section of this Decision entitled "Remedy."

(b) Remove from the personnel records of all the employees named in the attached notice marked "Appendix," all references contained therein, in the form of disciplinary warnings or notices of suspension, which issued against said employees, that pertained to the incidents found herein to be violative of the Act.

(c) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its East Hartford and Windsor Locks, Connecticut, places of business copies of the attached notice marked "Appendix."[46] Copies of said notice, on forms provided by the Regional Director for Region 1, after being duly signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for Region 1, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith.

IT IS FURTHER ORDERED that the amended complaint in this matter be, and it hereby is, dismissed as to any alleged violations of the Act not found hereinabove in this Decision.

[45] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

[46] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."